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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/538,562

03/29/2000

Donald F. Gordon

SEDN/247CIP1

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EXAMINER

SHELEHEDA, JAMES R

ART UNIT

PAPER NUMBER

2623

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/538,562	<b>Applicant(s)</b> GORDON ET AL.	
	<b>Examiner</b> James Sheleheda	<b>Art Unit</b> 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 16-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/06/06 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed on 06/06/06 have been fully considered but they are not persuasive.

First, applicant argues that the claimed invention is tracking the usage of IPG pages, not programs.

In response, the claims require "receiving demand cast guide page usage information." As Gordon discloses receiving movie request selections, which *were selected from the program guide* (see page 9, lines 33-page 10, lines 8 and page 18, lines 8-page 19, lines 16), this clearly reads upon the claim language. The system is tracking IPG usage to identify and provide the requested video presentation.

Second, applicant argues that the claimed invention is not tracking this guide page usage information in order to present programs to a user, but to present guide pages.

In response, the claims recite “using said information to control which demand-cast streams associated with guide pages of said array of guide pages are multiplexed...”. Thus, the claims do **not** require using the usage information to present guide pages, but merely to present demand cast streams **associated** with guide pages. As Gordon discloses providing demand-cast video streams which are selected from a guide page (see page 9, lines 33-page 10, lines 8 and page 18, lines 8-page 19, lines 16), the provided streams are clearly **associated** with guide pages. Thus, applicant’s arguments are not convincing, as Gordon clearly meets the broad claim language.

Third, applicants argues that the claimed invention is tracking the usage of IPG pages in order to control which demand cast streams associated with guide pages are transmitted.

In response, Gordon tracks user selections from a guide (guide page usage information) to provide demand cast video streams (*associated* with guide pages as they are specifically selected from guide pages; see page 9, lines 33-page 10, lines 8 and page 18, lines 8-page 19, lines 16), thus meeting the claim limitations.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

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(i.e., presenting IPG pages on demand) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In this cast, as indicated above, the claims merely recite “demand cast streams **associated** with guide pages”. The demand-cast streams are not limited to being IPG pages within the claims. Thus, Gordon’s system for providing video-cast streams on demand meets the current claim limitations.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being unpatentable by Gordon et al. (WO 98/31115) (of record).

Claim1, a system for providing access to array of guide pages from an interactive program guide (selection menus; see US provisional patent Application 60/034,490 filed 01/13/1997 and incorporated herein by reference; page 19, line 15 in which Application 60/034,490 clearly discloses “an array of guide pages” in its specification page 19, lines 30-page 21 and Fig. 3-4, 7-19) within constraints

imposed by limited bandwidth available in a distribution network (summary of the invention; page 2-5), the system comprising:

A distribution control center coupled to the distribution network (Fig. 1);

A session manager 106 in the distribution control center for monitoring and controlling usage of demand cast stream bandwidth with the distribution network (page 14, lines 7-page 14, lines 31); and

A transport stream generator 102 including a processor and a multiplexer (inherently including a processor and a multiplexer so to generate the multiplexed transport stream 104), for receiving demand-cast program guide usage information from the session manager 106 and using the information to control which demand-cast streams associated with guide pages of the array of guide pages are multiplexed into a transport stream, and for generating the multiplexed transport stream for transmission to a plurality of terminals via the distribution network (reads on a program is selected from a program guide is communicating back to the server 102 through communication path 103 from the video session manager 106, as such the server 102 provides the requested information to the (video) session manager 106 as a packetized data stream, see page 9, lines 33-page 10, lines 8 and page 18, lines 8-page 19, lines 16).

Claim 2, wherein the pluralities of terminals  $124_{1-n}$  are coupled to a node 110 within the distribution network, and the transport stream is transmitted from the transport stream generator to the node (Fig. 1; page 12, lines 15-30+).

Claim 3, wherein the session manager (el. 216 of video session manager 106 of Fig. 2) receives demand-cast stream acquisition, release, and request messages from the plurality of terminals (page 13, lines 21-page 14, lines 16).

Claim 4, wherein the acquisition, release, and request messages are transmitted via out-of-band communications (upstream; page 13, lines 29-35).

Claim 5, wherein the transport stream includes a list of available demand-cast streams (...what programming is available to a particular subscriber...), and the list is used by a terminal in determining whether a stream with a particular guide page may be acquired immediately (...PIN that provides "regular" viewing authorization...) or needs to be requested (...authorizes to access so-called "late night" programming...) see page 19, lines 3-16.

Claim 6, wherein the acquisition message is sent from the terminal to the session manager if the stream is acquired (...the set-top return an acknowledgment ... page 17, lines 18-24), and a request message is sent from the terminal to the session manager if the stream needs to be requested (...requesting a program...page 21, lines 5-10 and page 23, lines 22-26).

Claim 7, wherein a release message is sent from the terminal to the session manager once the terminal is no longer acquiring the stream (page 21, lines 16-19).

Claim 8, wherein the session manager tracks demand-cast streams that are acquired by at least one terminal by maintaining a dynamic list of terminals that are presently acquiring each demand-cast stream (page 18, lines 12-27).

Claim 9, wherein the session manager 106 informs the transport stream generator 102 when a terminal request a demand-cast stream, which is not present in the transport stream (page 14, lines 17-page 15, lines 14).

Claim 10, wherein the session manager 106 informs the transport stream generator 102 when there is no longer any terminals acquiring the demand-cast stream (page 16, lines 29-35; page 21, lines 13-18).

Claim 11, wherein the distribution control center comprises a cable headend (see Fig. 1).

Claim 12, wherein the transport stream generator 102 is co-located with the session manager 106 at the distribution control center (see Fig. 1).



Claim 13, wherein the transport stream generator 102 is located separately from the session manager 106 (see Fig. 1).

Claim 14, wherein the session manager (106, Fig. 1-2 and 216, Fig. 4; page 20, lines 33-page 21, lines 19) comprises:

A monitoring module 218 for receiving acquisition, release, and request messages from a plurality of terminals;

A tracking module 220 for maintaining a dynamically list of terminals that are presently acquiring each demand-cast stream (page 14, lines 28-34; page 18, lines 1-6); and

A controlling module 222 for informing the transport stream generator 202 when a terminal requests demand-cast stream which is not present in the transport stream and for informing the transport stream generator when there is no longer any terminals acquiring the demand-cast stream (page 21, lines 16-19).

Claim 15, wherein the transport generator 102 comprises:

An interface to a session manager 106 for receiving demand-cast program guide usage information 103 from the session manager 106 (page 14, lines 17-22);

A multiplexer (inherently within the server 102) for multiplexing demand-cast streams into a transport stream 104 for transmission to a plurality of terminals via a distribution network (page 4, lines 31-34+; page 9, lines 33-page 10, lines 8 and page 13, lines 18-20); and

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A controller (inherently within the server 102) for controlling which demand-cast streams are multiplexed into the transport stream using the demand-cast program guide usage information 103 (page 9, line 33-page 10, lines 8 and page 14, lines 14-16).

### **Conclusion**

5. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

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(Date)

Typed or printed name of person signing this certificate:

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Signature: \_\_\_\_\_

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### **Certificate of Transmission**

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Typed or printed name of person signing this certificate:

\_\_\_\_\_

Signature: \_\_\_\_\_

Registration Number: \_\_\_\_\_

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Patent Examiner  
Art Unit 2623

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PRIMARY PATENT EXAMINER